



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R08-OAR-2015-0205; FRL-9945-64-Region 8]

Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Billings, MT 2010 SO₂ Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of Montana's request to redesignate the Billings sulfur dioxide (SO₂) nonattainment area to attainment for the 2010 SO₂ primary national ambient air quality standards (NAAQS). The EPA has determined that the Billings SO₂ nonattainment area is attaining the 2010 SO₂ primary NAAQS. In addition, the EPA is approving Montana's maintenance plan which provides for continued attainment of the 2010 SO₂ primary NAAQS in the area. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification Number EPA-R08-OAR-2015-0205. All documents in the docket are listed on the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202-1129.

EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S.

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SUPPLEMENTARY INFORMATION:

I. Background

The EPA designated a portion of Billings, Montana, as nonattainment for the 2010 SO₂ NAAQS on August 5, 2013, (effective October 4, 2013) using 2009-2011 ambient air quality data, leaving the remaining portion of Billings and Yellowstone County undesignated and subject to future analysis and designation. *See* 78 FR 47191 (August 5, 2013).

On January 16, 2015, the State submitted a request for the EPA to determine that the Billings SO₂ nonattainment area has attained the 2010 SO₂ NAAQS per the EPA's "clean data policy." On December 14, 2015, the State submitted to the EPA a request for redesignation of the Billings 2010 SO₂ nonattainment area to attainment and a SIP revision containing a maintenance plan for the area.

On March 7, 2016, the EPA published a notice of proposed rulemaking (NPR) which proposed to approve the State's requests. *See* 81 FR 11733. Specifically, the EPA proposed to take the following four separate but related actions: (1) determine that the Billings SO₂ nonattainment area is attaining the 2010 1-hour SO₂ NAAQS; (2) approve Montana's plan for maintaining the 2010 1-hour SO₂ NAAQS (maintenance plan); (3) redesignate the Billings SO₂ nonattainment area to attainment for the 2010 1-hour SO₂ NAAQS; and (4) determine that the Billings SO₂ nonattainment area has clean monitoring data. The details of Montana's submittal and the

rationale for EPA's proposed actions are explained in the NPR and will not be restated here. The EPA received two public comments on the NPR, both of which supported the proposed redesignation. We acknowledge these supportive comments.

II. Final Action

The EPA is taking final actions on the redesignation request and maintenance plan submitted by the State of Montana on December 14, 2015 for the Billings 2010 SO₂ nonattainment area. The EPA is approving Montana's redesignation request because we have determined that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for this standard. The EPA finds that the monitoring data demonstrate that the area has attained the 2010 SO₂ NAAQS, and continues to attain the NAAQS as a result of the permanent and enforceable shutdown of the PPL Corette facility, whose emissions in 2009-2011 had been responsible for the area not previously meeting the NAAQS. The EPA is also approving the associated maintenance plan for the Billings 2010 SO₂ nonattainment area as a revision to the Montana SIP for the 2010 SO₂ NAAQS because it meets the requirements of section 175A of the CAA. Approval of this redesignation request will change the official designation of the Billings 2010 SO₂ nonattainment area to attainment for the 2010 SO₂ NAAQS.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP

submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the final rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the

U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from the date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Environmental protection, Air pollution control, Sulfur dioxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 18, 2016.

Shaun L. McGrath,
Regional Administrator,
Region 8.

40 CFR parts 52 and 81 are amended as follows:

PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart BB - Montana

2. Section 52.1370, paragraph (e), under “(9) Yellowstone County” is amended by adding the entry “Billings 2010 SO₂ Maintenance Plan” at the end of the table to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(e) * * *

Title/Subject	State effective date	Notice of final rule date	NFR Citation
* * * * *			
(9) Yellowstone County			
* * * * *			
Billings 2010 SO ₂ Maintenance Plan	12/14/2015	[Insert date of publication in the Federal Register].	[Insert Federal Register citation].

3. Section 52.1398 is added to read as follows:

§ 52.1398 Control strategy: Sulfur dioxide.

(a) *Redesignation to attainment.* The EPA has determined that the Billings 2010 sulfur dioxide (SO₂) nonattainment area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2010 1-hour SO₂ NAAQS. The EPA is therefore redesignating the Billings 2010 SO₂ nonattainment area to attainment.

(b) The EPA is approving the maintenance plan for the Billings nonattainment area for the 2010 SO₂ NAAQS submitted by the State of Montana on December 14, 2015.

PART 81 -- DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart C – Section 107 Attainment Status Designations

5. Section 81.327, table “Montana -- 2010 Sulfur Dioxide NAAQS (Primary)” is amended by revising the entry for “Yellowstone County (part)” to read as follows:

§ 81.327 Montana.

* * * * *

Designated area	Designation	
	Date	Type
* * * * *		
Yellowstone County (part)	<u>[insert date of publication in the Federal Register]</u>	Attainment
The area originates at the point defined as the southwest corner of Section 11, Township 1S, Range 26E. From that point the boundary		

<p>proceeds north along the western section line of Section 11 to the point of intersection with the midline of Interstate Highway 90. From that point the boundary follows the midline of Interstate Highway 90, across the Yellowstone River, to the point where the highway midline intersects the northern boundary of Section 35, Township 1N, Range 26E. From that point the boundary proceeds east along the northern section line of Sections 35 and 36 to the point where Old US 87/Hardin Road leaves the section line and turns southeast. The boundary follows the midline of Old US 87/Hardin Road southeast to the point where the road intersects the western boundary of the SE 1/4 of the SE 1/4 of Section 31, Township 1N, Range 27E. From that point the boundary proceeds south along the 1/4 section line to the southern boundary of Township 1N, then east to the northeast corner of Section 5, Township 1S, Range 27E. The boundary then proceeds south along the eastern section line of sections 5 and 8 to the southeast corner of Section 8, Township 1S, Range 27E, where it turns west and follows the south section line of Sections 8 and 7, Township 1S, Range 27E; and Sections 12 and 11, Township 1S, Range 26E, back to the point of origin</p>		
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